IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2618 of 2006

RAJESH KUMAR & ANR.
V/S
A.D.J.ANOOPGARH & ORS.

Mr. RK SINGHAL, for the appellant / petitioner

Mr. S.L. JAIN, for the respondent

Date of Order : 16.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The petitioner filed an application under Section 10 CPC on 31.3.2004 alleging inter-alia that in the present suit, relief has been claimed for challenging and declaring the sale dated 9.11.2001 to be invalid, illegal and void, while with respect to the same land, plaintiff No.2 had already filed a suit between the same parties, and for the same reliefs being suit No.95/03, and therefore, it was prayed that till disposal of the suit No.95/03, the further proceeding in the present suit is required to be stayed.

Learned trial Court has found in the impugned order that the suit No.95/03 has already been decided way-back on 6.4.2004 of course that judgment has been challenged in appeal before the High Court, and has further observed that the earlier suit was filed for specific performance of the contract, wherein an objection was

raised about the non-maintainability of that suit without challenging the sale dated 9.11.2001, but then in that suit there had been no inquiry about the validity of that sale dated 9.11.2001, and thus, it was found that the subject matter of the two suits is different. In my view, if the reason given by learned trial Court is taken to be correct, then also, the impugned order does not require any interference, and even if the stand taken by the petitioner is taken to be correct that the matter in issue in the two suits is directly and substantially in issue in the previously instituted suit, even then as the previously instituted suit has already been decided. Therefore, taken from any standpoint, the proceedings in the present suit are not required to be stayed.

The writ petition thus, has no force, and is dismissed summarily.

(N P GUPTA),J.

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